

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

MAR 14 2005

JAMES W. MCCORMACK, CLERK
By: _____
DEP CLERK

THIS IS A CAPITAL CASE

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

DAMIEN WAYNE ECHOLS,)	Case No. 5:04CV00391-WRW
)	
Petitioner,)	
)	
vs.)	
)	
LARRY NORRIS, Director,)	
Arkansas Department of Corrections,)	
)	
Respondent.)	

**MOTION FOR EXTENSION OF TIME
TO RESPOND TO MOTION TO DISMISS**

Petitioner Damien Echols, by and through his undersigned counsel, hereby requests a forty-four day extension of time, from March 16, 2005, to and including April 29, 2005, to file a response to Respondent Norris's Motion to Dismiss Petition for Writ of Habeas Corpus for Non-Exhaustion, filed on March 2, 2005.

I.

Petitioner filed his original petition for a writ of habeas corpus in this matter on October 28, 2004. On November 4, 2004, the Court issued an order requiring

COPY 13

Respondent to answer the petition within twenty days of service with the petition. Respondent was served by certified mail on December 9, 2004. He thereafter sought and received an extension of time, to and including February 28, 2005, to respond to the petition. On February 23, 2005, Respondent sought and received an additional, seven day extension, to and including March 7, 2005, to file his response.

On February 28, 2005, petitioner Echols filed an amended petition for a writ of habeas corpus. On March 2, 2005, respondent filed and served by mail a motion to dismiss the amended petition on the grounds that it contained one claim that had not been exhausted in the courts of Arkansas, i.e., the state in which petitioner alleges he is unlawfully incarcerated. District Court Local Rule 7.2 requires that a response be filed within 11 days from the date a motion is served upon a party. Federal Rule of Civil Procedure 6(e) enlarges this time by a period of 3 days where service is accomplished pursuant to Rule 5(b)(2)(B) (mail). Accordingly, by petitioner's calculation, his response to Respondent's motion to dismiss the amended petition is presently due by March 16, 2005.

//

//

//

II.

Like the original petition, Echols's amended petition asks that it be stayed and held in abeyance rather than dismissed so that Echols can exhaust the relevant claim in state court without risking a later determination that all of his claims, upon their re-presentation to this Court after exhaustion has been accomplished, have run afoul of the time limitations set forth in 28 U.S.C. section 2244(d). See amended petition, at par. 25-36. Respondent contends that the stay-and-hold procedure is not available in this case. See Respondent's motion to dismiss, at 13-15. Both parties agree, however, that the United States Supreme Court will determine the availability of the procedure in habeas actions like this one when it issues its decision in *Rhines v. Weber*, 346 F.3d 799 (8th Cir. 2003), *cert. granted* 124 S. Ct. 2905 (June 28, 2004). See amended petition, par. 27-29; motion to dismiss, at 14 n.5.

III.

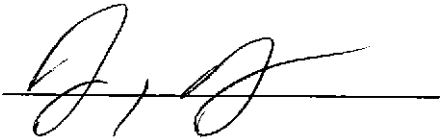
Rhines was orally argued in the Supreme Court on January 12, 2005. Petitioner believes it is likely that the Supreme Court's decision in the case is likely to issue before the extension date requested in this motion. For the reasons stated above, he submits that this court's analysis of his stay-and-hold request and of respondent's challenge to that procedure will be significantly advanced by the

decision in *Rhines*. Accordingly, petitioner respectfully requests that the Court extend the time for filing a response to the motion to dismiss for a period of forty-four days, from March 16, 2005, to and including April 29, 2005, so that he may address the applicability of *Rhines* to respondent's pending motion.

DATED: March 11, 2005

Respectfully submitted,

DENNIS P. RIORDAN
DONALD M. HORGAN

By 

DONALD M. HORGAN, Cal. SBN 121547
RIORDAN & HORGAN
523 Octavia Street
San Francisco, CA 94102
(415) 431-3472

Attorneys for Petitioner
DAMIEN WAYNE ECHOLS

PROOF OF SERVICE BY MAIL

Re: Damien Wayne Echols v. Larry Norris, Director No. 04CV00391 HLJ

I am one of the attorneys for petitioner Damien Echols. My business address is 523 Octavia Street, San Francisco, California 94102. I served the within:

**Motion for Extension of Time to
Respond to Motion to Dismiss**

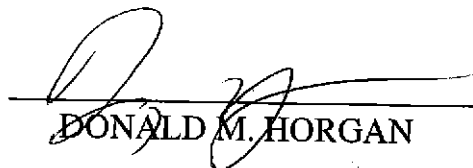
on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box at San Francisco, California, addressed as follows:

Brent Gasper, Esq.
Deputy Arkansas Attorney General
Arkansas Attorney General's Office
323 Center Street, Ste. 200
Little Rock, Arkansas 77201

Larry B. Norris, Director
Arkansas Department of Corrections
6814 Princeton Pike
Pine Bluff, AR 71603

I certify or declare under penalty of perjury that the foregoing is true and correct.

Executed on March 11, 2005, at San Francisco, California.


DONALD M. HORGAN